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Item 6 of the provisional agenda*

PROGRAMME MATTERS

Mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s and further development of international environmental law aiming at sustainable development

Report of the Meeting of Senior Government Officials Expert in Environmental Law for the Mid-Term Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s

Note by the Executive Director

The Executive Director has the honour to transmit for the information of the Governing Council the report of the Meeting of Senior Government Officials Expert in Environmental Law for the Mid-Term Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s, which was held in Nairobi from 2 to 6 December 1996, in accordance with Governing Council decision 17/25, paragraph 8. The Meeting, attended by representatives of 68 Governments, the European Commission and relevant organizations, adopted the observations and recommendations on the programme areas of the Programme for the Development and Periodic Review of Environmental Law for the 1990s for consideration by the Governing Council at its nineteenth session. These observations and recommendations, which are referred to in paragraph 22 of the report as being annexed thereto, are being submitted separately to the Council in all official languages as an annex to the report of the Executive Director on the mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s and further development of international environmental law aiming at sustainable development (UNEP/GC.19/32). The Meeting also recommended that the Executive Director transmit to the Governing Council at its nineteenth session a number of elements to be considered for inclusion in the operative paragraphs of a decision on environmental law, as set out in paragraph 23 of its report. These elements have been incorporated into the sugested action by the Council in the above-mentioned report of the Executive Director. The complete report of the Meeting, including the annex, is being circulated in English, French and Spanish, the three working languages of the Meeting, under the symbol UNEP/Env.Law/3/3.

* UNEP/GC.19/1.

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Annex

REPORT OF THE MEETING OF SENIOR GOVERNMENT OFFICIALS EXPERT IN ENVIRONMENTAL LAW FOR THE MID-TERM REVIEW OF THE PROGRAMME FOR THE DEVELOPMENT AND PERIODIC REVIEW OF ENVIRONMENTAL LAW FOR THE 1990s

INTRODUCTION

1. The Meeting of Senior Government Officials Expert in Environmental Law for the Mid-term Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s was held at the United Nations Office at Nairobi (UNON) from 2 to 6 December 1996.

2. The Meeting was convened by the Executive Director of the United Nations Environment Programme (UNEP) to address the tasks envisaged in Governing Council decisions 17/25 and 18/9, taking fully into account the recommendations of the Commission on Sustainable Development (CSD).

I. OPENING OF THE MEETING

3. The Meeting was opened by the Executive Director of UNEP at 10.20 a.m. on Monday, 2 December 1996.

4. In her opening address, the Executive Director welcomed participants to Nairobi and said that the interplay between the scientific processes, the making of public policy and its expression through environmental law had shaped the activities of UNEP since its establishment. Under the Programme for the Development and Periodic Review of Environmental Law for the 1990s, UNEP had continued to develop and implement its environmental law programme, one example being the development of an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade. Also under the Programme, UNEP had been assisting countries to build their capacity to enhance their national environmental law and regulatory schemes, including those for the implementation of environmental conventions.

5. Noting that periodic reviews of the Programme would help align UNEP's priorities with those of Governments, the Executive Director encouraged participants to take into account relevant recent developments and invited their views on how such developments could be incorporated into the UNEP environmental law programme. Drawing the attention of the Meeting to the conclusions of the three meetings of the Expert Group Workshop on International Environmental Law Aiming at Sustainable Development, which included a draft position paper on international environmental law aiming at sustainable development, a preliminary draft feasibility study on new international environmental instruments, and observations on individual areas of the Programme, she suggested that the Meeting might wish to consider how the objectives of each programme area could be achieved. She also invited the Meeting to make recommendations to the Governing Council at its forthcoming session on how the Programme should be implemented towards the end of the decade.

II. ELECTION OF OFFICERS

6. At its opening session, the Meeting elected the following officers by acclamation:

Chairperson: H.E. Mr. B.G. Maiorski (Russian Federation)

Vice-Chairpersons: Ms. A. Moglia (Argentina)
Mr. P.S. Rao (India)
Mr. P. Széll (United Kingdom)

Rapporteur: Mr. C. Omondi (Kenya)

III. ORGANIZATIONAL MATTERS

A. Attendance

7. The Meeting was attended by experts from the following countries: Albania, Argentina, Austria, Bangladesh, Belarus, Benin, Cameroon, Canada, Central African Republic, Chad, Chile, China, Czech Republic, Dominican Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Gambia, Germany, Guinea, India, Iraq, Israel, Jamaica, Japan, Jordan, Kazakstan, Kenya, Madagascar, Malawi, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Niger, Nigeria, Pakistan, Peru, Philippines, Poland, Romania, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, South Africa, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Venezuela, Zimbabwe.

8. The Meeting was also attended by representatives of the following United Nations bodies and Secretariat units: United Nations Department for Policy Coordination and Sustainable Development (DPCSD), United Nations Institute for Training and Research (UNITAR), Interim Secretariat of the Convention to Combat Desertification.

9. The following intergovernmental organization was represented: European Commission.

10. The following international non-governmental organizations were represented by observers: World Conservation Union (IUCN), International Centre for Environmental, Social and Policy Studies.

B. Adoption of the agenda

11. The Meeting adopted the following agenda on the basis of the provisional agenda (UNEP/Env.Law/3/1):

1. Opening of the Meeting.

2. Election of officers.

3. Organizational matters:

(a) Adoption of the agenda;

(b) Organization of work.

4. Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s.

5. Consideration of observations and recommendations.

6. Other matters.

7. Adoption of the report.

8. Closure of the Meeting.

C. Organization of work

12. The Meeting decided to form a Working Group of the Whole to consider the substantive items on its agenda and that no plenary sessions would be convened while the Working Group was meeting.

13. The Meeting also decided to establish a Drafting Group under the chairmanship of Mr. Patrick Széll (United Kingdom) to prepare draft observations and recommendations on each of the areas in the Programme and to submit them to the plenary for consideration with a view to adoption and submission to the Governing Council at its nineteenth session. The Drafting Group would start its work after each area had been examined in detail in the Working Group under agenda item 4.

14. During the organization of the work, the Chairperson pointed out that the Meeting should focus its discussions on modalities to help enhance and strengthen the implementation of the Montevideo Programme II. Recent developments in international environmental law and the outcome of the meeting of the UNEP Expert Group Workshop on International Environmental Law Aiming at Sustainable Development should be taken into account.

IV. REVIEW OF THE PROGRAMME FOR THE DEVELOPMENT AND PERIODIC REVIEW OF ENVIRONMENTAL LAW FOR THE 1990s

15. In considering agenda item 4, the Meeting had before it a note by the secretariat on the mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s (UNEP/Env.Law/3/2), the report of the Working Group on Liability and Compensation for Environmental Damage arising from Military Activities (UNEP/Env.Law/3/Inf.1), and the final report of the Expert Group Workshop on International Environmental Law Aiming at Sustainable Development (UNEP/IEL/WS/3/2). It also had before it the Mid-term Report on Implementation of the Programme for the Development and Periodic Review of Environmental Law for the 1990s, which had been prepared by the secretariat to explore the background for the mid-term review of the Programme, including the extent to which it had been implemented and, where

appropriate, priority areas and new areas that needed to be addressed in the light of recent developments in the field of the environment and sustainable development. The secretariat introduced those documents.

16. In their general statements under this item, a number of experts thanked UNEP for organizing the Meeting. They commended UNEP's work in the field of environmental law and expressed their support for the Montevideo Programme II. Some experts underlined that in view of the important role played by UNEP in the development of environmental law, the work of UNEP in that field should be reflected at the forthcoming special session of the General Assembly to review and appraise the implementation of Agenda 21. Within UNEP, environmental law should continue to be a programme priority. Stress was laid on the importance for UNEP to further the development of international environmental law and to provide assistance to developing countries and countries with economies in transition in enhancing national environmental legislation. A focus should be put on implementation of environmental treaties. Given the above, it was suggested that the Meeting should make concrete proposals with regard to a decision on UNEP's environmental law programme by the Governing Council at its nineteenth session.

17. It was noted that there were important emerging issues which should be addressed under the Montevideo Programme II, for example, the relationship between international environmental law and the World Trade Organization (WTO) Agreements.

18. The view was expressed that the Meeting should send a message to the Governing Council of UNEP at its nineteenth session that adequate funds should be ensured for UNEP's activities in environmental law.

19. Following the general remarks, the Working Group reviewed and discussed in detail each of the programme areas of the Montevideo Programme II. Observations on the Montevideo Programme II provided by the Expert Group Workshop on International Environmental Law Aiming at Sustainable Development were fully taken into account during the discussions.

V. CONSIDERATION OF OBSERVATIONS AND RECOMMENDATIONS

20. On the basis of the review and discussions, the Meeting considered how best the programme areas of the Montevideo Programme II would be implemented towards the end of the present decade. The observations regarding the Programme for the Development and Periodic Review of Environmental Law for the 1990s and other documents contained in the Final Report of the Expert Group Workshop on International Law Aiming at Sustainable Development (UNEP/IEL/WS/3/2) were taken into account as appropriate during the review.

21. After the Working Group of the Whole had reviewed in detail all programme areas of the Montevideo Programme II, the Drafting Group considered and prepared draft observations and recommendations on those programme areas. Some experts considered the possibility of action on the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships; the discussion was inconclusive. The issue

of UNEP's International Technical Guidelines for Safety in Biotechnology was also raised by some experts, although the discussion was inconclusive.

22. The Meeting adopted the observations and recommendations for consideration by the Governing Council of UNEP at its nineteenth session, as contained in the annex to the present report.*

23. The Meeting also recommended that the Executive Director transmit to the Governing Council at its nineteenth session the following elements to be considered for inclusion in the operative paragraphs of a decision on environmental law:

> "1. Commends the United Nations Environment Programme (UNEP) for the action it has taken to implement the Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo Programme II) during 1993-1996 and, in particular, the efficient use it has made of the limited resources available to it.
>
> "2. Takes note with appreciation of the position paper on international environmental law aiming at sustainable development.
>
> "3. Takes note of the preliminary study on the need for and feasibility of new international environmental instruments aiming at sustainable development and requests the Executive Director to continue within available resources work in identifying ways of better implementing existing and future international instruments aiming at sustainable development and the need for and feasibility of new such instruments.
>
> "4. Endorses the observations and recommendations made by the Meeting of Senior Government Officials Expert in Environmental Law for the Mid-term Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s on specific programme areas of Montevideo Programme II, as contained in the annex to the report of the Meeting, and requests the Executive Director to use them as guidance in further implementing the Programme.
>
> "5. Encourages the Executive Director to implement the Programme, as appropriate, in close cooperation with the relevant international organizations.
>
> "6. Reaffirms that the environmental law programme should remain among the major priority areas on which UNEP should concentrate in its 1998-1999 programme of work, and that adequate resources should be

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* Note by the secretariat. The observations and recommendations of the Meeting regarding the Programme for the Development and Periodic Review of Environmental Law for the 1990s are being circulated to the Council separately in all official languages in the annex to the the report of the Executive Director on the mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s and further development of international environmental law aiming at sustainable development (UNEP/GC.19/32). For reasons of economy, they are not reproduced in the present information document.

allocated for its implementation, taking into account, however, the overall financial challenges facing the organization.

"7. Recommends that the role of UNEP in the field of international law aiming at sustainable development be reflected in the outcome of the Commission on Sustainable Development at its fifth session, preceding the special session of the United Nations General Assembly to review and assess the implementation of Agenda 21, to be held in 1997."

24. Following the adoption of the observations and recommendations, a representative, speaking on behalf of the members of the Group of Latin American and Caribbean Countries, said that they noted with great concern that the present meeting had not been able, in its observations and recommendations, to make any mention of environmental matters related to the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships, even though the issue was within the framework of the principles of international law and relevant multilateral agreements. That was a serious problem for their countries. In this respect, they expressed their deep concern regarding practices that impede the existence of an environment that is clean and free from nuclear wastes. The representative of Turkey said that he supported the opinion of the Group of Latin American and Caribbean Countries.

25. Another representative, speaking on behalf of the States members of the European Union present at the meeting and the European Commission, said that it would not be appropriate for the review of the Montevideo Programme II to include any element that was not included in the Programme. The Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships was not part of the Montevideo Programme II. Moreover, in light of the efforts presently undertaken to enhance the efficiency of the United Nations system as a whole, UNEP should avoid embarking on work presently undertaken by IMO. It was important that UNEP focus on core issues. There was no need for the scope of the Montevideo Programme II to be further broadened. The representatives of the Russian Federation and the United States of America said that they supported the view expressed by the European Union member States and the European Commission.

VI. ADOPTION OF THE REPORT

26. The Meeting adopted the present report on 6 December 1996, on the basis of the draft report circulated as document UNEP/Env.Law/3/L.1.

VII. CLOSURE OF THE MEETING

27. After the customary exchange of courtesies, the Chairperson declared the meeting closed at 5.30 p.m. on 6 December 1996.